

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT MISSOURI**

W.J.W. and M.N.E.,)
On their own behalf,)
And on behalf of their daughter,)
K.A.W., a minor,)
)
Plaintiffs,)
vs.)
)
HICKMAN MILLS CONSOLIDATED)
SCHOOL DISTRICT #1,)
VIVIAN BROOKS,)
JAMES TINSLEY,)
C.F. AND E.S.)
)
Defendants.)

Civil Action No. 05-CV-00435-SOW

PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

Plaintiffs, by and through their counsel, submit to the Court their proposed jury instructions to be used during the trial of this matter, the first set being with citations followed by the same without citations:

Respectfully submitted,

/Sarah A. Brown
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ATTORNEYS FOR PLAINTIFF

INSTRUCTION NO. 1

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a civil case brought by the plaintiffs against the defendants. The plaintiffs allege that the defendant Hickman Mills Consolidated School District No. 1 is liable under Title IX for sexual discrimination, sexual harassment and retaliation. Plaintiffs allege that the defendant Hickman Mills Consolidated School District No. 1 and individual defendants James Tinsley and Vivian Brooks are liable under the Missouri Human Rights Act for discrimination, retaliation and aiding and abetting under the Act. The plaintiffs allege that defendants CF and ES are liable for assault and battery. The defendants deny these allegations. It will be your duty to decide from the evidence whether the plaintiffs are entitled to a verdict against defendants.

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated - that is, formally agreed to by the parties; and any facts that have been judicially noticed - that is facts which I say you must accept as true.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right and sometimes an obligation to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 3

During the trial it may be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 4

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them _____.

When you leave at night, your notes will be secured and not read by anyone.

INSTRUCTION NO. 5

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend

clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research (including research in the dictionary) or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INSTRUCTION NO. 6

The trial will proceed in the following manner:

First, the plaintiffs' attorney may make an opening statement. Next, the defendants' attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiffs will then present evidence and counsel for defendants may cross-examine. Following the plaintiffs' case, the defendant may present evidence and plaintiffs' counsel may cross-examine.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

INSTRUCTION NO. 7

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of or during trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room.

INSTRUCTION NO. 8

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdicts should be.

INSTRUCTION NO. 9

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 10

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 11

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

EIGHTH CIRCUIT MODEL CIVIL JURY INSTRUCTION 3.06
ELECTION OF FOREPERSON; DUTY TO DELIBERATE; COMMUNICATIONS WITH
COURT; CAUTIONARY; UNANIMOUS VERDICT; VERDICT FORM

INSTRUCTION NO. 12

As you have heard, there is a typewritten transcript of the tape recording you are about to hear. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you identify the speakers. The tape recording is evidence for you to consider. The transcript, however, is not evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. The tape recording itself is the primary evidence of its own contents. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice, or by inaccuracies in the transcript. You should, therefore, rely on what you hear rather than what you read when there is a difference.

INSTRUCTION NO. 13

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to this case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath. Such testimony is entitled to the same consideration, and it is to be judged as to credibility, and weighed, and otherwise considered by the jury, in so far as possible, in the same way as if the witness had been present, and had testified from the witness stand.

INSTRUCTION NO. 14

Defendant Hickman Mills School District # 1 can only act through its officers, agents or employees. Therefore, whenever mention is made of the school district doing or not doing something, it means an officer, agent or employee of the school district acting within the scope of their employment.

INSTRUCTION NO. 15

In this case, Plaintiff has claims based on a federal statute known as Title IX of the Education Amendments of 1972, which is commonly referred to as “Title IX.”

Title IX provides that

no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

INSTRUCTION NO. 16

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's sex discrimination claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff was subjected to discrimination by failing to fully and adequately respond to complaints of harassment;

Third, the discrimination effectively deprived Plaintiff of equal access to educational opportunities or benefits provided by the school district

Fourth, a school district official had knowledge of the discrimination, and

Fifth, the school district acted with deliberate indifference to the discrimination.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

You may find that the school district is “deliberately indifferent,” as used in paragraph 5 above, if it has been proved by the preponderance of the evidence that the school district's response to the harassment is clearly unreasonable in light of the known circumstances.

Davis v. Monroe County Board of Education, 526 U.S. 629, 633 (1999);

Shrum v. Kluck, 249 F.3d 773, 782 (8th Cir. 2001);

Theno v. Tonganoxie Unified School Dist. No. 464, 377 F.Supp.2d 952 (D.Kan. 2005)

INSTRUCTION NO. 17

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's sex harassment claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff was harassed based on her sex;

Third, the harassment was so severe, pervasive, and objectively offensive that it either effectively deprived Plaintiff of access to an educational opportunity or benefit provided by the school district or detracted her from her educational experience;

Fourth, A school district official had actual knowledge of the harassment, and

Fifth, the school district acted with deliberate indifference to the harassment.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

You may find that the school district is “deliberately indifferent,” as used in paragraph 5 above, if it has been proved by the preponderance of the evidence that the school district's response to the harassment is clearly unreasonable in light of the known circumstances.

Davis v. Monroe County Board of Education, 526 U.S. 629, 633 (1999);

Shrum v. Kluck, 249 F.3d 773, 782 (8th Cir. 2001);

Theno v. Tonganoxie Unified School Dist. No. 464, 377 F.Supp.2d 952 (D.Kan. 2005)

INSTRUCTION NO. 18

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's retaliation claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff complained of sex discrimination or harassment, and

Third, the school district retaliated against Plaintiff.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 174 (2005)

Davis v. Monroe County Board of Education, 526 U.S. 629, 633 (1999).

INSTRUCTION NO. 19

If an institution takes timely and reasonable measures to end the harassment, it is not liable under Title IX for prior harassment. If, on the other hand, an institution either fails to act, or acts in a way which could not have reasonably been expected to remedy the violation, then the institution is liable for what amounts to an official decision not to end discrimination.

Gebser v. Lugo Vista Independent School Dist., 524 U.S. 274, 283 (1998)

INSTRUCTION NO. 20

The means of knowledge are ordinarily the equivalent in law to knowledge. So, if it appears from the evidence in the case that a person had information which would lead a reasonably prudent person to make inquiry through which he would surely learn certain facts, then this person may be found to have had actual knowledge of those facts, the same as if he had made such inquiry and had actually learned such facts.

That is to say, the law will charge a person with notice and knowledge of whatever he would have learned, upon making such inquiry as it would have been reasonable to expect him to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the Defendant(s) had regular opportunities to observe the condition, then you may draw the inference that he/they had knowledge of the condition.

INSTRUCTION NO. 21

The deliberate indifference standard is not a mere “negligence” or “reasonableness” standard. Deliberate indifference is established if the school district’s response or lack of response was clearly unreasonable in light of all the known circumstances.

INSTRUCTION NO. 22

The Missouri Human Rights Act makes it an unlawful discriminatory practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to do so, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, which includes a public school, or to segregate or discriminate against any such person in the use thereof on the grounds of race, color, or sex.

INSTRUCTION NO. 23

The Missouri Human Rights Act makes it an unlawful discriminatory practice (1) To aid, abet, incite, compel, or coerce the commission of acts prohibited under this chapter or to attempt to do so; or (2) To retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter.

Aiding and abetting may be accomplished by acts of omission – failing to aid a victim when having an affirmative duty to do so – as well as commission – actually participating in the offense.

In this case, Plaintiff claims that Defendants Tinsley and Brooks “aided and abetted” the sexually discriminatory and hostile environment by (1) attempting to cover up the sexual assault crimes; (2) by using their positions of authority to force Plaintiff to change her story; (3) interrogating Plaintiff for hours; (4) refusing Plaintiff either parental support or medical treatment; (5) allowing continued harassment and threats when they had the duty and power to stop it; (6) taking no effective remedial measures to stop the ongoing harassment or threats; (7) punishing Plaintiff by revoking her medically required hall pass (8) discounting her reports of harassment and refusing to investigate them; (9) allowing the football players continued access to Plaintiff; as well as numerous other acts.

INSTRUCTION NO. 24

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced the discrimination, harassment or retaliation, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 25

Your verdict must be for plaintiff and against defendant James Tinsley on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced the discrimination, harassment or retaliation, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 26

Your verdict must be for plaintiff and against defendant Vivian Brooks on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced discrimination, harassment or retaliation toward Plaintiff, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 27

Your verdict must be for Plaintiff and against Defendant C.F. if you believe:

First, Defendant threatened Plaintiff with the intent to cause Plaintiff apprehension of offensive contact or bodily harm, and

Second, Defendant thereby caused Plaintiff to be in apprehension of offensive contact or bodily harm.

INSTRUCTION NO. 28

Your verdict must be for Plaintiff and against Defendant E.S. if you believe:

First, Defendant threatened Plaintiff with the intent to cause Plaintiff apprehension of offensive contact or bodily harm, and

Second, Defendant thereby caused Plaintiff to be in apprehension of offensive contact or bodily harm.

INSTRUCTION NO. 29

Your verdict must be for Plaintiff against Defendant C.F. if you believe:

First, Defendant intentionally touched Plaintiff, and

Second, Defendant thereby caused Plaintiff bodily harm.

INSTRUCTION NO. 30

Your verdict must be for Plaintiff against Defendant E.S. if you believe:

First, Defendant intentionally touched Plaintiff, and

Second, Defendant thereby caused Plaintiff bodily harm.

INSTRUCTION NO. 31

If you find in favor of Plaintiff and against Defendant Hickman Mills Consolidated School District No. 1 under Instruction Nos. ____ or ____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant's conduct. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 32

If you find in favor of Plaintiff and against Defendant James Tinsley under Instruction No. _____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant Tinsley's conduct.

You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 33

If you find in favor of Plaintiff and against Defendant Vivian Brooks under Instruction No. ____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant Brooks' conduct. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 34

If you find in favor of Plaintiff under Instruction No. ____, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of One Dollar (\$1.00).

INSTRUCTION NO. 35.

If you find in favor of plaintiff under Instructions ___ and or ___, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe she sustained and is reasonably certain to sustain in the future as a direct result of the occurrence mentioned in the evidence.

INSTRUCTION NO. 36

In addition to actual and nominal damages mentioned in the other instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against any or all of the defendants, and if you find by the preponderance of the evidence that one or more of the defendants was callously indifferent to plaintiff's rights, then, in addition to any damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or deter the defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

If you decide to award punitive damages, you should consider the following in determining the amount of the punitive damages to award: the nature of the defendant's conduct under the totality of the circumstances; the frequency of the defendant's conduct; how reprehensible the defendant's conduct was toward the plaintiff; what amount of punitive damages, in addition to the compensatory damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for its wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future; the amount of fines and civil penalties applicable to similar conduct; and whether the amount of punitive damages bears a reasonable relationship to the compensatory damages awarded.

Model Civil Jury Instructions For The District Courts Of The Eighth Circuit 5.04, 5.34, 5.02C, MAI 10.03 (modified);
Devitt and Blackmar, Federal Jury Practice and Instructions, 4th Edition, Section 104.07 (modified)

VERDICT FORM 1

Note: Complete this form by writing in the names required by your verdict.

On the Title IX sexual discrimination claim of Plaintiff KAW, as submitted in Instruction No. _____, we find in favor of

(Plaintiff KAW) or (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 2

Note: Complete this form by writing in the names required by your verdict.

On the Title IX sexual harassment claim of Plaintiff KAW, as submitted in Instruction No. _____, we find in favor of

(Plaintiff KAW) or (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 3

Note: Complete this form by writing in the names required by your verdict.

On the Title IX retaliation claim of Plaintiff KAW, as submitted in Instruction No. _____,
we find in favor of

(Plaintiff KAW) or (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 4

Note: Complete this form by writing in the names required by your verdict.

On Plaintiff 's claim against Defendant Hickman Mills School District # 1, as submitted in Instruction No. _____, we find in favor of

(Plaintiff KAW) or (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 5

Note: Complete this form by writing in the names required by your verdict.

On the Plaintiff's claim against Defendant Tinsley as submitted in Instruction No. _____,
we find in favor of

(Plaintiff KAW) or (Defendant James Tinsley)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 6

Note: Complete this form by writing in the names required by your verdict.

On the Plaintiff's claim against Defendant Brooks as submitted in Instruction No. _____,
we find in favor of

(Plaintiff KAW) or (Defendant Vivian Brooks)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 7

Note: Complete this form by writing in the names required by your verdict.

On the assault and/or battery claims of Plaintiff against Defendant E.S as submitted in Instructions No. ___ and/or ___, we find in favor of

(Plaintiff KAW) or (Defendant E.S.)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$_____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 8

Note: Complete this form by writing in the names required by your verdict.

On the assault and/or battery claims of Plaintiff against Defendant E.S as submitted in Instructions No. ___ and/or ___, we find in favor of

(Plaintiff KAW) or (Defendant E.S.)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$_____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

Clean Copy of Proposed Instructions

INSTRUCTION NO. 1

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a civil case brought by the plaintiffs against the defendants. The plaintiffs allege that the defendant Hickman Mills Consolidated School District No. 1 is liable under Title IX for sexual discrimination, sexual harassment and retaliation. Plaintiffs allege that the defendant Hickman Mills Consolidated School District No. 1 and individual defendants James Tinsley and Vivian Brooks are liable under the Missouri Human Rights Act for discrimination, retaliation and aiding and abetting under the Act.. The plaintiffs allege that defendants CF and ES are liable for assault and battery. The defendants deny these allegations. It will be your duty to decide from the evidence whether the plaintiffs are entitled to a verdict against defendants.

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated - that is, formally agreed to by the parties; and any facts that have been judicially noticed - that is facts which I say you must accept as true.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right and sometimes an obligation to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 3

During the trial it may be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 4

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them _____.

When you leave at night, your notes will be secured and not read by anyone.

INSTRUCTION NO. 5

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your

spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research (including research in the dictionary) or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INSTRUCTION NO. 6

The trial will proceed in the following manner:

First, the plaintiffs' attorney may make an opening statement. Next, the defendants' attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiffs will then present evidence and counsel for defendants may cross-examine. Following the plaintiffs' case, the defendant may present evidence and plaintiffs' counsel may cross-examine.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

INSTRUCTION NO. 7

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of or during trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room.

INSTRUCTION NO. 8

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdicts should be.

INSTRUCTION NO. 9

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 10

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 11

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

INSTRUCTION NO. 12

As you have heard, there is a typewritten transcript of the tape recording you are about to hear. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you identify the speakers. The tape recording is evidence for you to consider. The transcript, however, is not evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. The tape recording itself is the primary evidence of its own contents. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice, or by inaccuracies in the transcript. You should, therefore, rely on what you hear rather than what you read when there is a difference.

INSTRUCTION NO. 13

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to this case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath. Such testimony is entitled to the same consideration, and it is to be judged as to credibility, and weighed, and otherwise considered by the jury, in so far as possible, in the same way as if the witness had been present, and had testified from the witness stand.

INSTRUCTION NO. 14

Defendant Hickman Mills School District # 1 can only act through its officers, agents or employees. Therefore, whenever mention is made of the school district doing or not doing something, it means an officer, agent or employee of the school district acting within the scope of their employment.

INSTRUCTION NO. 15

In this case, Plaintiff has claims based on a federal statute known as Title IX of the Education Amendments of 1972, which is commonly referred to as “Title IX.”

Title IX provides that

no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

INSTRUCTION NO. 16

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's sex discrimination claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff was subjected to discrimination by failing to fully and adequately respond to complaints of harassment;

Third, the discrimination effectively deprived Plaintiff of equal access to educational opportunities or benefits provided by the school district

Fourth, a school district official had knowledge of the discrimination, and

Fifth, the school district acted with deliberate indifference to the discrimination.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

You may find that the school district is “deliberately indifferent,” as used in paragraph 5 above, if it has been proved by the preponderance of the evidence that the school district's response to the harassment is clearly unreasonable in light of the known circumstances.

INSTRUCTION NO. 17

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's sex harassment claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff was harassed based on her sex;

Third, the harassment was so severe, pervasive, and objectively offensive that it either effectively deprived Plaintiff of access to an educational opportunity or benefit provided by the school district or detracted her from her educational experience;

Fourth, A school district official had actual knowledge of the harassment, and

Fifth, the school district acted with deliberate indifference to the harassment.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

You may find that the school district is “deliberately indifferent,” as used in paragraph 5 above, if it has been proved by the preponderance of the evidence that the school district's response to the harassment is clearly unreasonable in light of the known circumstances.

INSTRUCTION NO. 18

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's retaliation claim if all the following elements have been proved by the preponderance of the evidence:

First, Defendant Hickman Mills School District # 1 received federal funds;

Second, Plaintiff complained of sex discrimination or harassment, and

Third, the school district retaliated against Plaintiff.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 19

If an institution takes timely and reasonable measures to end the harassment, it is not liable under Title IX for prior harassment. If, on the other hand, an institution either fails to act, or acts in a way which could not have reasonably been expected to remedy the violation, then the institution is liable for what amounts to an official decision not to end discrimination.

INSTRUCTION NO. 20

The means of knowledge are ordinarily the equivalent in law to knowledge. So, if it appears from the evidence in the case that a person had information which would lead a reasonably prudent person to make inquiry through which he would surely learn certain facts, then this person may be found to have had actual knowledge of those facts, the same as if he had made such inquiry and had actually learned such facts.

That is to say, the law will charge a person with notice and knowledge of whatever he would have learned, upon making such inquiry as it would have been reasonable to expect him to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the Defendant(s) had regular opportunities to observe the condition, then you may draw the inference that he/they had knowledge of the condition.

INSTRUCTION NO. 21

The deliberate indifference standard is not a mere “negligence” or “reasonableness” standard. Deliberate indifference is established if the school district’s response or lack of response was clearly unreasonable in light of all the known circumstances.

INSTRUCTION NO. 22

The Missouri Human Rights Act makes it an unlawful discriminatory practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to do so, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, which includes a public school, or to segregate or discriminate against any such person in the use thereof on the grounds of race, color, or sex.

INSTRUCTION NO. 23

The Missouri Human Rights Act makes it an unlawful discriminatory practice (1) To aid, abet, incite, compel, or coerce the commission of acts prohibited under this chapter or to attempt to do so; or (2) To retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter.

Aiding and abetting may be accomplished by acts of omission – failing to aid a victim when having an affirmative duty to do so – as well as commission – actually participating in the offense.

In this case, Plaintiff claims that Defendants Tinsley and Brooks “aided and abetted” the sexually discriminatory and hostile environment by (1) attempting to cover up the sexual assault crimes; (2) by using their positions of authority to force Plaintiff to change her story; (3) interrogating Plaintiff for hours; (4) refusing Plaintiff either parental support or medical treatment; (5) allowing continued harassment and threats when they had the duty and power to stop it; (6) taking no effective remedial measures to stop the ongoing harassment or threats; (7) punishing Plaintiff by revoking her medically required hall pass (8) discounting her reports of harassment and refusing to investigate them; (9) allowing the football players continued access to Plaintiff; as well as numerous other acts.

INSTRUCTION NO. 24

Your verdict must be for plaintiff and against defendant Hickman Mills Consolidated School District No. 1 on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced the discrimination, harassment or retaliation, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 25

Your verdict must be for plaintiff and against defendant James Tinsley on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced the discrimination, harassment or retaliation, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 26

Your verdict must be for plaintiff and against defendant Vivian Brooks on plaintiff's discrimination claim under the Missouri Human Rights Act if any of the following elements have been proved by the preponderance of the evidence:

First, defendant either refused, withheld from or denied Plaintiff, or to attempted to refuse, withhold from or deny her, any of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School; or

Second, defendant segregated or discriminated against Plaintiff in the use of the accommodations, advantages, facilities, services, or privileges made available at Ruskin High School on the grounds of race, color, or sex; or

Third, defendant aided, abetted, incited, compelled, or coerced discrimination, harassment or retaliation toward Plaintiff, or attempted to do so; or

Fourth, defendant retaliated or discriminated in any manner against Plaintiff because she either opposed any discriminatory practice or because Plaintiff filed a complaint, testified or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter

If none of the above elements has been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 27

Your verdict must be for Plaintiff and against Defendant C.F. if you believe:

First, Defendant threatened Plaintiff with the intent to cause Plaintiff apprehension of offensive contact or bodily harm, and

Second, Defendant thereby caused Plaintiff to be in apprehension of offensive contact or bodily harm.

INSTRUCTION NO. 28

Your verdict must be for Plaintiff and against Defendant E.S. if you believe:

First, Defendant threatened Plaintiff with the intent to cause Plaintiff apprehension of offensive contact or bodily harm, and

Second, Defendant thereby caused Plaintiff to be in apprehension of offensive contact or bodily harm.

INSTRUCTION NO. 29

Your verdict must be for Plaintiff against Defendant C.F. if you believe:

First, Defendant intentionally touched Plaintiff, and

Second, Defendant thereby caused Plaintiff bodily harm.

INSTRUCTION NO. 30

Your verdict must be for Plaintiff against Defendant E.S. if you believe:

First, Defendant intentionally touched Plaintiff, and

Second, Defendant thereby caused Plaintiff bodily harm.

INSTRUCTION NO. 31

If you find in favor of Plaintiff and against Defendant Hickman Mills Consolidated School District No. 1 under Instruction Nos. ____ or ____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant's conduct. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 32

If you find in favor of Plaintiff and against Defendant James Tinsley under Instruction No. _____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant Tinsley's conduct.

You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 33

If you find in favor of Plaintiff and against Defendant Vivian Brooks under Instruction No. ____, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you believe she sustained or is reasonably certain to sustain in the future as a direct result of Defendant Brooks' conduct. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering, anguish, inconvenience, insult, distress, embarrassment, humiliation, indignity, loss of enjoyment of life and anxiety the plaintiff has experienced and is reasonably certain to experience in the future;
2. The reasonable value of the care and treatment needed by and provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The losses associated with the denial of educational opportunities and benefits sustained by the plaintiff or likely to be sustained by her in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 34

If you find in favor of Plaintiff under Instruction No. ____, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of One Dollar (\$1.00).

INSTRUCTION NO. 35.

If you find in favor of plaintiff under Instructions ___ and or ___, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe she sustained and is reasonably certain to sustain in the future as a direct result of the occurrence mentioned in the evidence.

INSTRUCTION NO. 36

In addition to actual and nominal damages mentioned in the other instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against any or all of the defendants, and if you find by the preponderance of the evidence that one or more of the defendants was callously indifferent to plaintiff's rights, then, in addition to any damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or deter the defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

If you decide to award punitive damages, you should consider the following in determining the amount of the punitive damages to award: the nature of the defendant's conduct under the totality of the circumstances; the frequency of the defendant's conduct; how reprehensible the defendant's conduct was toward the plaintiff; what amount of punitive damages, in addition to the compensatory damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for its wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future; the amount of fines and civil penalties applicable to similar conduct; and whether the amount of punitive damages bears a reasonable relationship to the compensatory damages awarded.

VERDICT FORM 1

Note: Complete this form by writing in the names required by your verdict.

On the Title IX sexual discrimination claim of Plaintiff KAW, as submitted in Instruction No. _____, we find in favor of

_____ or _____
(Plaintiff KAW) (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:
\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 2

Note: Complete this form by writing in the names required by your verdict.

On the Title IX sexual harassment claim of Plaintiff KAW, as submitted in Instruction No. _____, we find in favor of

_____ or _____
(Plaintiff KAW) (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:
\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 3

Note: Complete this form by writing in the names required by your verdict.

On the Title IX retaliation claim of Plaintiff KAW, as submitted in Instruction No. _____,
we find in favor of

_____ or _____
(Plaintiff KAW) (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:
\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 4

Note: Complete this form by writing in the names required by your verdict.

On Plaintiff 's claim against Defendant Hickman Mills School District # 1, as submitted in Instruction No. _____, we find in favor of

(Plaintiff KAW) or (Defendant Hickman Mills School District # 1)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 5

Note: Complete this form by writing in the names required by your verdict.

On the Plaintiff's claim against Defendant Tinsley as submitted in Instruction No. _____,
we find in favor of

(Plaintiff KAW) or (Defendant James Tinsley)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 6

Note: Complete this form by writing in the names required by your verdict.

On the Plaintiff's claim against Defendant Brooks as submitted in Instruction No. _____,
we find in favor of

_____ or _____
(Plaintiff KAW) (Defendant Vivian Brooks)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:
\$ _____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 7

Note: Complete this form by writing in the names required by your verdict.

On the assault and/or battery claims of Plaintiff against Defendant E.S as submitted in Instructions No. ___ and/or ___, we find in favor of

_____ or _____
(Plaintiff KAW) (Defendant E.S.)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$_____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

VERDICT FORM 8

Note: Complete this form by writing in the names required by your verdict.

On the assault and/or battery claims of Plaintiff against Defendant E.S as submitted in Instructions No. ___ and/or ___, we find in favor of

(Plaintiff KAW) or (Defendant E.S.)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find Plaintiff's damages as defined in Instruction _____ to be:

\$_____ (stating the amount, or if you find that Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

Foreperson

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2006, I electronically filed the foregoing with the clerk of the Court using the CM-ECF systems which sent notification of such filing to the following:

Brandon Mizner
Robert O. Jester
Matthew J. Gist
Ensz & Jester, P. C.,
1100 Main Street, Suite 2121
Kansas City, MO 64105
Attorneys for Defendants

And I hereby certify that on November 27, 2006, I have mailed by United States Postal Service the foregoing document to the following non CM-ECF participants:

E.S.
6036 East 137th Street
Apt. 1610
Grandview, Missouri 64030-3766

C. F.
11601 Fuller
Kansas City, Missouri 64134

s/ Sarah A. Brown _____